STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ANTWAIN LAMAR WILSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LORINE WILSON,

Respondent-Appellant.

UNPUBLISHED
February 25, 2000

No. 219377
Kalamazoo Circuit Court
Family Division
LC No. 97-000051-NA

Before: Zahra, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Respondent appeals as of right from the family court order terminating her parental rights to the minor child under MCL 712A.19b(3)(a)(ii) and (g); MSA 27.3178(598.19b)(3)(a)(ii) and (g). We affirm.

We reject respondent's argument that § 19b(3)(g) is unconstitutional either because it improperly imposes a "no-fault" standard for terminating parental rights that interferes with a parent's constitutionally protected right to liberty, or because it is unconstitutionally vague. These constitutional issues involve questions of law, which we review de novo on appeal. *In re Hamlet (After Remand)*, 225 Mich App 505, 521; 571 NW2d 750 (1997). When reviewing whether a statute is constitutional, we adhere to the following principles:

> Under established rules of statutory construction, statutes are presumed constitutional, and courts have a duty to construe a statute as constitutional unless unconstitutionality is clearly apparent. Every reasonable presumption must be made in favor of constitutionality. To determine whether a statute violates due process, the pertinent issue is whether the statute bears a reasonable relation to a permissible legislative

> objective. The party challenging the constitutionality of a statute bears the burden of overcoming the presumption of constitutionality. [*Id*. at 521-522 (citations omitted).]

Although it is well established that parents have a significant interest in the companionship, care, custody, and management of their children, which has been characterized as an element of "liberty" to be protected by due process, *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993), respondent's claim that § 19b(3)(g) unconstitutionally interferes with a parent's protected right to liberty is without merit. Culpable neglect is not a requirement for taking jurisdiction over a child or terminating parental rights. *In re Jacobs*, 433 Mich 24, 37; 444 NW2d 789 (1989). The purpose of child protective proceedings is to protect the child, and the juvenile code is intended to protect children from unfit homes rather than to punish the childrens' parents. *In re Brock*, *supra* at 107-108. Therefore, respondent's culpable intention to withhold proper care and custody from the child is not relevant in this proceeding.

Respondent's claim that § 19b(3)(g) is unconstitutionally vague is likewise without merit. A statute may be unconstitutionally vague if:

> (1) it does not provide fair notice of the conduct proscribed; (2) it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed; and (3) its coverage is overly broad and impinges on First Amendment freedoms. [*In re Gosnell*, 234 Mich App 326, 334; 594 NW2d 90 (1999), quoting *People v Morey*, 230 Mich App 152, 163; 583 NW2d 907 (1998).]

Where an challenge for vagueness does not involve First Amendment freedoms, the analysis is performed in light of the facts of the particular case. *Ray Twp v B & BS Gun Club*, 226 Mich App 724, 732; 575 NW2d 63 (1997). To provide fair notice of the conduct proscribed, the statute must give an individual of ordinary intelligence a reasonable opportunity to know what is prohibited. *In re Gosnell*, *supra*. The statute must not use terms that require persons of common intelligence to guess at the statute's meaning and differ regarding the statute's application. *Id.*

We believe that § 19b(3)(g) provides fair notice of the conduct proscribed and gives a person of ordinary intelligence a reasonable opportunity to know what is expected. The phrase "proper care and custody" is not unusual, complex, or obscure. Further, the statute does not confer on the court unstructured or unlimited discretion. Rather, it allows for termination of parental rights only where a parent fails to provide proper care or custody of a child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child. *Id.* Therefore, the statute is not unconstitutionally vague.

Finally, upon review of the record, we conclude that the trial court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Because only one statutory ground is required to terminate parental rights, *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991), we need not decide whether termination was also warranted under § 19b(3)(a)(ii). Respondent also failed to show that termination of her parental rights was clearly not in the

child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Thus, the trial court did not err in terminating respondent's parental rights to the child.

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Joel P. Hoekstra